

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL HNATIUK,

Petitioner,

Case No. 06-13880

v.

Honorable Patrick J. Duggan

JAN E. TROMBLEY,

Respondent.

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on August 11, 2008.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
 U.S. DISTRICT COURT JUDGE

Daniel Hnatiuk (“Petitioner”), a state prisoner currently incarcerated at the Saginaw Correctional Facility in Freeland, Michigan, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on August 31, 2006, challenging his 2004 conviction for second degree murder. In his original application, Petitioner raised a single claim relating to the trial court’s failure to allow him to withdraw his guilty plea. On May 14, 2007, Petitioner filed a “Motion to Hold Habeas Corpus Petition in Abeyance,” in which he asserts that he was seeking the appointment of appellate counsel pursuant to the

Supreme Court's ruling in *Halbert v. Michigan*, 545 U.S. 605, 125 S. Ct. 2582 (2005).¹

The Michigan Supreme Court ultimately denied Petitioner's motion for appointment of appellate counsel, prompting Magistrate Judge Paul J. Komives to whom this Court referred all pretrial matters, to deny Petitioner's motion as moot on February 7, 2008. Petitioner then filed an objection on February 21, 2008, as well as a separate motion to amend his motion to hold his habeas petition in abeyance. In his latest motion, Petitioner requests an abeyance so that he may exhaust five additional claims that were included in a motion for relief from judgment filed in the state trial court on July 19, 2007.

On July 18, 2008, Magistrate Judge Komives issued an order vacating his February 7, 2008 order. That same day, Magistrate Judge Komives filed a Report and Recommendation ("R&R") recommending that the Court grant Petitioner's motion to amend his motion to hold his petition in abeyance and grant Petitioner's motion to hold his petition in abeyance. At the conclusion of the R&R, Magistrate Judge Komives advises the parties that they may object and seek review of the R&R within ten days of service upon them. (R&R at 7.) The R&R also advised the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.*)(citing *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 46 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981)). Neither party has filed objections to the R&R.

¹In *Halbert*, the Supreme Court held that Michigan's practice of denying appellate counsel to defendants convicted by a guilty or nolo contendre plea violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *Id.*

Accordingly,

IT IS ORDERED that Plaintiff's "Motion to Amend Motion to Hold Habeas Corpus Petition in Abeyance" (Doc. No. 15) is **GRANTED**.

IT IS FURTHER ORDERED that "Motion to Hold Habeas Corpus Petition in Abeyance" is **GRANTED**.

IT IS FURTHER ORDERED that this habeas corpus proceeding is **HELD IN ABEYANCE** pending Petitioner's exhaustion of his state court remedies provided that Petitioner returns to this Court within **thirty (30) days** of exhausting his state court remedies and files, in the above-captioned case, a motion to lift the stay and file an amended petition adding the exhausted claims.²

IT IS FURTHER ORDERED that the Clerk of the Court **CLOSE** this case for statistical purposes only, and upon receipt of a motion to lift the stay and file an amended petition adding the exhausted claims, the Court will order the Clerk to reopen this case for statistical purposes.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

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Laura Cook, A.A.G.

²In other words, Petitioner's motion and amended petition should include the same case caption and number.

